
Appeal Decision

Site visit made on 11 March 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2020

Appeal Ref: APP/G5180/C/19/3233307

Land at 57 Star Lane, Orpington BR5 3LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Raymond Lam, The Quach Co Ltd against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered 17/00374/OPDEV, was issued on 17 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, on the land,
 - 1) The construction of a hip to gable roof extension, not in accordance with the Lawful Development Certificate plans ref 17/01261/PLUD approved by the Planning Inspector in the Appeal reference: APP/G5180/X/17/3184942, and
 - 2) The construction of a two storey side/rear extension and rear external staircase.
 - The requirements of the notice are to:
 - i. Make alterations to the roof to bring it into accordance with the plans ref 17/01261/PLUD approved by the Planning Inspector in the Appeal reference: APP/G5180/X/17/3184942,
 - ii. Remove the 2 storey side/rear extension described in paragraph 3.2,
 - iii. Remove from the land all resulting debris and materials as a result of the above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. I direct that the enforcement notice be corrected by the deletion of the contents of paragraph 3 of the notice and the insertion of the following; "Without planning permission the construction of a two storey side/rear extension and rear external staircase";
2. I direct that the enforcement notice be corrected by the deletion of paragraph 5(i) of the notice.
3. I direct that the enforcement notice be corrected by the deletion of paragraph 5(ii) of the notice and the insertion of the following; "Remove the two storey side/rear extension and rear external staircase".
4. The appeal on ground (g) succeeds and the enforcement notice is varied by the deletion of 6 months and the substitution of 9 months as the period for compliance.

5. Subject to these corrections and variations the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

6. An application for costs was made by Mr Raymond Lam, The Quach Co Ltd against Council of the London Borough of Bromley. This application is the subject of a separate decision.

The ground (e) appeal

7. The appellant asserts that the Council had not served the notice on the occupiers of the house in multiple occupation (HMO) and had incorrectly served the notice on the owners at the registered address listed on Companies House. The appellant indicates that it is with pure chance that he was made aware of the notice as a copy of the unopened letter was handed to him which was addressed to the owner/occupier of 57 Star Lane.
8. The Council maintain that the Limited Company was served the notice at the address disclosed on the Land Registry. In relation to the occupants of the HMO the Council had served a notice at the property address and the occupants would have been aware of the existence of the notice since they share the facilities of the HMO. It is argued that there was no need to serve the notice on each individual occupant of the HMO. The Council indicates that the owners had not suffered any injustice given that they have appealed the notice and the service to the owners/occupiers by hand had achieved the desired purpose since it was passed to the owner by the occupants of the property.
9. The appellant claims improper service of the notice in relation to section 172(2) and section 329 of the Act and that the HMO occupiers have been deprived of the right of appeal.
10. Section 329 deals with service of notices and indicates that a notice may be served either by delivering it to a person on whom it is to be served, by leaving it at the usual or last known place of abode of that person, by sending it to the address of that person, or by delivering it to the company secretary at the registered address of the company. The notice was served at the address of the appeal property and those persons that have an interest in the premises are taken to be duly served with the notice having regard to section 329(2). While this unopened letter was handed to the owner, he was ultimately aware of the notice and has appealed the notice on all grounds of appeal excluding one.
11. The Courts have also held that a local planning authority is entitled to serve an enforcement notice on property owners as it appears on the Land Registry. From the available evidence it is probable that the Council has appropriately served the notice on the owner and occupiers of the land in relation to section 172(2). Nevertheless, I may disregard improper service if the appellant or person not served with the notice are not substantially prejudiced. Given that the appellant has appealed the notice on four grounds of appeal the owner has not demonstrated what prejudice has arisen. The occupiers' position is similarly safeguarded by the owner's appeal and there is no available evidence to indicate that the occupiers would have appealed the notice on the remaining

ground (d), on immunity, when the owner/appellant had not elected to pursue this ground himself.

12. I therefore conclude that it appears that the Council had appropriately served the notice, but in any event, it has not been shown that the owner/occupiers' interests have been prejudiced by any lack of improper service.

13. The appeal on ground (e) therefore fails.

The ground (c) appeal

14. The ground (c) appeal relates to the hip to gable roof extension and the staircase. The appellant's submission in relation to the removal of the parking space hardstanding is not pursued as this is not an identified breach in the notice or a requirement of the notice.

The hip to gable roof extension

15. The Council concedes that the hip to gable extension has been constructed in accordance with the lawful development certificate APP/G5180/X/17/3184942 with the removal of the parapet wall and is not contesting this part of the appeal. The removal of the parapet wall was undertaken prior to the issuing of the notice and should not have been identified in the allegation and the requirements of the notice. This part of the ground (c) appeal succeeds and the notice is corrected accordingly.

The staircase

16. The appellant contends that the staircase is permitted development under Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, (GPDO).

17. The staircase is attached to a rear/side two storey extension. From the available evidence and having viewed the scaled drawings and site, I would concur with the Council that the extension would not be permitted development under Class A.1 (h)(i) and (j) of the GPDO. The staircase which is attached to a development which requires planning permission would itself not be permitted development. The staircase is a building operation and is development and extends beyond the rear wall of the original development by more than 3 metres and is attached to a development which has a width greater than half the width of the original dwellinghouse.

18. I therefore consider as a matter of fact and degree that the staircase is not permitted development under Article 3, Schedule 2, Part 1, Class A.1 (h)(i) and (j) of the GPDO. The staircase and the rear/side two storey extension as a matter of fact and degree is development requiring planning permission, and no such permission has been granted. This part of the ground (c) appeal therefore fails.

19. I note that the appellant indicates that the staircase is not mentioned in the requirement of the notice. In my view the wording of requirement 5(ii) does refer to the description in paragraph 3.2 of the allegation and is therefore clear on its face that the staircase forms part of the requirements of the notice.

20. Due to the partial success on ground (c) the allegation and requirements would need altering. These changes now merely reflect the development enforced against and therefore no prejudice would arise from them.

The appeal on ground (a) and the deemed application

21. The main issue is the effect of the development on the character and appearance of the surrounding area.
22. The appeal property is a two-storey semi-detached house that has been extended with a recessed two-storey flat roof side extension and a two-storey flat roof rear extension and rear external staircase.
23. A rear dormer and hip to gable roof extension has been added which was considered lawful under permitted development and allowed on appeal under reference APP/G5180/X/17/3184942.
24. The two-storey side and rear extension and staircase was dismissed at appeal under reference APP/G5180/W/17/3189594 in 2018, although this deemed application included the parapet wall which has since been removed. The current appeal is therefore considering the as-built extensions described in paragraph 22.
25. No. 57 sits forward of No. 59 which has a single storey garage adjacent to the boundary with No. 57. The two-storey side extension of No. 57 is positioned right-up to the common boundary adjoining the single storey garage and extends above it. The flat roof construction of the two-storey side extension is evident when viewed from the pavement in front of No. 59. Its box-like shape while recessed is made noticeable due to its scale and proximity to the boundary of the site. Set against the altered and shallower pitch of the main rear roof plane and steeper front roof slope it appears at odds lacking uniformity. The side extension does not therefore tie into the design of the main house or appear to match any other roof design in the vicinity of the appeal site.
26. I note that No. 55 and No. 53 have added side extensions although these schemes have incorporated a pitch roof into their designs. There is some variety to the type and design of houses along Star Lane, but these generally have been altered with a form of pitched roof which ties into the main house or has some relief in terms of separation distance from the neighbouring boundary. In the case of the appeal development there is limited separation distance resulting in a development which appears cramped. The previous Inspector concluded that the development appeared oversized and clumsy in the street scene exacerbated by the height of the parapet wall. Following the removal of the parapet wall these criticisms are not altogether resolved. The development in my view does appear an incongruous addition to the appeal property and the surrounding area.
27. The rear extension and staircase forms part of the development enforced against. They are not separate components of the development and are integral to the functioning HMO. I note the concern of the Council concerning the design of the staircase and the concern from the neighbouring resident in relation to overlooking. However, the staircase is generally hidden from public viewpoints and does not adversely impact on the character and appearance of the surrounding area. I consider that the overlooking concern is not significantly different or made worse than the degree of overlooking which already occurs from the rear dormers of the appeal property and the first-floor rear extension windows. However, given my conclusion that the side extension

- is unacceptable, and these elements form the whole development enforced against the appeal on ground (a) and the deemed application fails to succeed.
28. I have considered the previous planning permission plans granted in 2004 under reference 04/03780. This permission was not implemented and whilst it appears a larger rear/side extension, it is a materially different scheme set further-back from the front, had a pitched roof and was considered under a different policy context.
29. I note the suggestion that the appellant would be willing to accept a planning condition requiring the side extension to have a pitched roof and for this to be submitted for approval to the local planning authority. However, I am not certain of the final design of the roof and no details are before me to demonstrate its appearance and finished materials. The deemed application is that which is enforced against and I am not in a position to grant a deemed application whereby the details have not been shown.
30. I consider that the development fails to comply with relevant Bromley Local Plan Policies 6, 8 and 37 referred to in the notice. These require that residential extensions respect the scale and form of the host dwelling and the surrounding area, provide space or gaps between buildings where they contribute to the character of the area, and require a minimum of 1 metre space from the side boundary of the site where the development is two or more storeys in height. All development proposals are expected to be of a high standard of design and respect the scale, proportion, form, layout of adjacent buildings and areas and positively contribute to the existing street scene. For the reasons I have outlined above the development fails to comply with these fore-mentioned policies.
31. I conclude that the development harms the character and appearance of the surrounding area. The ground (a) appeal and the deemed application should be dismissed.

The ground (f) appeal

32. The appellant claims that the side/rear extension development is policy compliant and should not be required to be demolished. The hip to gable extension and staircase is permitted development and should be allowed to remain.
33. I have considered the side/rear extension under the ground (a) appeal and concluded that this development is not policy compliant. The hip to gable extension is permitted development and for the reasons I have outlined under the ground (c) appeal the notice is corrected accordingly. For the reasons I have outlined in the ground (c) appeal the staircase is not permitted development and the requirement to remove it is necessary as it is attached to the rear wall of the unauthorised extension.
34. The requirements of the notice as corrected are to remove the side/rear extension and rear external staircase and to remove from the land all resulting debris and materials. These steps are not excessive, and no lesser step or obvious alternative lesser step has been put forward that would remedy the breach of planning control.
35. The appeal on ground (f) therefore fails.

The ground (g) appeal

36. The appellant indicates that 6 months is too short a period as the tenants of the HMO have individual tenancy agreements which run beyond that period. Should the tenants challenge the eviction then this would prolong the period needed to ensure vacant possession of the property. Remedial works could not be undertaken to the property while tenants are in the process of challenging the eviction notice. The appellant seeks 24 months as the compliance period.
37. The Council indicates that no evidence has been submitted in relation to the tenancy agreements and given that the development has been in situ since 2017 the appellant has had two years to re-house the tenants. The Council indicates that HMO tenancies usually run for 12 months with a six-month fixed period where neither party can end the tenancy. For this reason, the Council contends that 6 months is an appropriate compliance period.
38. However, I must balance the Council's reasons for issuing the notice in the public interest against the burden placed on the appellant and the disadvantage to persons who share the HMO accommodation, who will need to find alternative living arrangements.
39. In my view, a period of 9 months would strike the appropriate balance between these two conflicting interests so there would not be a disproportionate burden placed on the appellant. Whilst this extends the period of compliance it would provide an opportunity to find an alternative solution for the needs of the tenants.
40. To this limited extent, the appeal on ground (g) succeeds.

Iwan Lloyd

INSPECTOR